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LAW AND LIFE.

There is not a man alive unaffected by the law, not a lawyer on the rolls untroubled by life. Law and Life, Life and Law, the two words are almost interchangeable.

The SATURDAY REVIEW has recently initiated under the general title of "Law and Life" a new occasional feature, contributed by an eminent lawyer, dealing with various aspects of the law and its changes as they affect the ordinary man and woman. This feature does not appear regularly but whenever occasion demands.

The SATURDAY REVIEW stands resolutely for personal liberty. In an age in which encroaching Bureaucracy and the rule of Interference are slowly and insidiously robbing the Englishman of his freedom, the "SATURDAY" holds a watching brief for Liberty. Certain well-known cases have lately brought this aspect of our national life into peculiar prominence. Vigorous comment on all of these will be found in the leading articles and notes of the SATURDAY REVIEW.

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—The Hon. Mr. JUSTICE McCARDIE.

The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

Lord Phillimore.

THE NEW honour of which Lord PHILLIMORE has been the recipient—the honour of being a G.C.B.—is a fitting recognition of his public service. Lord PHILLIMORE is one of the grand old men of the law, but, notwithstanding his weight of years, his eye is not dim nor his natural forces abated. His deep interest in, and labours in the cause of, peace and all that makes for it, is again attested by his recent journey to Warsaw to address the members there assembled of the International Law Association. Having been, as he said, brought up in the tradition that the greatest crime against international law was the partition of Poland in the eighteenth and nineteenth centuries, it was to him a special satisfaction to visit that country which had now been re-created a nation through the labours of the jurists. It may almost be said that international law flows in the veins of Lord PHILLIMORE, for not only his father, the distinguished judge of the Admiralty Court two generations ago, but others of the family to which he belongs, have made valuable contributions to the subject which, after having been well-nigh shattered during the great war, is coming into its own again. Like so many of our ex-judges, the noble lord is not content to accept the pension to which he is entitled and do nothing in return for it; for in the House of Lords and the Judicial Committee of the Privy Council he takes his full share of the appellate work, bringing to it the scholarly and the judicial mind as well as the ripe experience of many years as a judge of first instance and a Lord Justice of the Court of Appeal. Like the other members of the family he has made numerous contributions to our legal literature, ecclesiastical law competing with international law for his special sympathy. One of his most recent books was his "Three Centuries of Treaties of Peace and their Teaching," a valuable piece of historical research.

Oath or Affirmation?

MOST PEOPLE whose business takes them often into courts of law, especially into police courts, are a little shocked at first at the rapid and careless way in which the oath is taken. Those who are susceptible on religious grounds dislike the irreverence of it all; others regard it as futile and archaic; only a few really believe that the taking of an oath is any more likely to bind a witness than any other form of words, such as an affirmation. Truthful people tell the truth, sworn or unsworn. Liars may be deterred by fear of punishment for perjury, but are not likely to regard the sacredness of the oath as such. The suggestion of a Swansea magistrate to a police constable recently is therefore of interest. He is reported as saying: "I wish some of you would affirm instead of taking the name of the Almighty all the time. It is perfectly legal to affirm, and it does seem to me irreverent to the name of God to take the oath in all cases. I know that you do not want to do it. It seems awful to take the name of the Lord all the time for these minor offences. Just think it over." But is it perfectly legal to affirm? Section 1 of the Oaths Act, 1888, permits an affirmation instead of an oath in the case of every person "objecting to be sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief." The court is bound to inquire why the witness wishes to affirm, in order to see that his reason is one allowed by the statute: *R.* v. *Moore*, 1891, 56 J.P. 345; 61 L.J. 80; 36 SOL. J. 233. Mere distaste for vain repetition, or susceptibility to the arguments against the efficacy of or necessity for an oath, will not avail, save where there is religious objection or an absence of religious belief. The suggestion that may perhaps be implied in the remarks of the justice, that trivial cases do not need evidence on oath, but that graver cases may, is of course impracticable. A witness must definitely take the line of swearing in every case or of affirming in every case, and neither he nor the court can make fine distinctions between trifling and serious charges.

Centralised Tax Collecting.

THE ANNOUNCEMENT that additional central tax collecting offices are to be instituted in various parts of the country has been received with much opposition in the towns and cities selected for further experiment on the lines tried in the Southampton area about a year ago. Taxpayers naturally object to travelling, perhaps many miles, for the pleasure of liquidating their income tax liability, especially when they have become used to a call from the local collector of taxes after several official reminders. The extension of this scheme is another example of the gradual disappearance of the personal touch in tax collecting. The officers in charge of these central offices are officials of the Board of Inland Revenue, and, although the old collectors serve under them, they are not responsible for any particular area in the district and become

little more than cashiers. Machinery as a means of collecting betting duty on the racecourse and in clubs may be a very successful system, but if mechanised methods are attempted in connexion with the collection of income tax we think that the impost will become even more unpopular than it is at present. The British taxpayer has the reputation of being a most uncomplaining creature, but for this reputation he owes much to the local officials, most of whom are appointed by the General Commissioners.

Spiritualism and Fortune Telling.

Sir ARTHUR CONAN DOYLE'S letter to *The Times*, of 6th August, apropos the recent prosecution at Westminster for fortune-telling, raises an important question. Sir ARTHUR says that the decision "makes any intermediary who has sent a person to a medium, or who has arranged a *séance*, responsible at law for whatever the medium does, or is said to have done." This is a little sweeping. What the law, as we understand it, does say, is this: "You must not profess to tell fortunes. If you predict a person's future, whether in a state of trance, or under the control of a spirit, or by any other means, you must answer for it. Equally, if, knowing that such things take place at *séances*, and that they are likely to take place, you arrange an appointment for someone else with a medium, then you may be liable for aiding, abetting, counselling and procuring the commission of an offence if the medium commits one." Clearly, if a medium be allowed to say: "I was under control. I neither knew, nor do I remember, what was said through me;" the law would be powerless; its answer must be that it can deal only with human beings, and that if human beings choose to surrender themselves to spirit control they must do it at the risk of punishment if, knowing that spirits often foretell the future, they break the law. At the same time, there is a large and quite responsible body of opinion in favour of an alteration in our obsolete Vagrancy Act (which Sir ARTHUR calls the Fortune Telling Act). So much genuine research work is going on, quite untinged with fraudulent or even mercenary motives, that it seems most unfortunate to invoke the criminal law against spiritualists whose convictions as "rogues and vagabonds" would be grotesque and absurd. It is difficult for the police to refrain from prosecuting if complaints lead them to the conclusion that offences against the existing law are being committed; but it is clear, morally, that there ought not to be any prosecutions unless there is proof that there is fraud or other harm being perpetrated. To an increasing number of thinking people, rightly or wrongly, spiritualism is part of their religion.

Dismissal of Bankruptcy Petition.

AN IMPORTANT decision affecting bankruptcy law and practice was recently given by a Divisional Court in bankruptcy in *Re a Debtor*, 1928, W.N. 146. In that case the petitioning creditor had sued the debtor for the recovery of a debt of £71 odd, which was payable in three instalments of £23 odd in November, October, December, 1927, but at the time of action brought only two instalments were owing, and judgment was accordingly recovered for £47 odd, the remaining instalment not being affected by the judgment. On the 23rd June, on which date judgment was given, and on which date also the third instalment as well had become due, the creditors' solicitors wrote to the debtors' solicitors to the effect, *inter alia*, that unless satisfactory arrangements were made with regard to the third instalment, they were instructed to issue a writ. The debtor thereupon sent a cheque for £23 odd in respect of the third instalment, but the creditor declined to clear the cheque, intimating that he would hold it until the judgment was satisfied. The debtor thereupon countermanded payment of the cheque and tendered the £23 odd in notes and cash, but the money was declined by the creditor. A bankruptcy notice was thereupon issued by the creditor, and a copy of the notice was served upon the debtor. The copy, however, contained an error in the surname of the person to whom the debt was to be paid (i.e., the petitioning creditor). The main question raised was whether by reason of the purported tender of the sum of £23 odd which, had it been accepted, would have had the effect of making the balance payable less than £50, and thus less than the minimum amount necessary for taking bankruptcy proceedings was, in the circumstances, "sufficient cause" why no order should be made and the petition dismissed within s. 5 (3) of the Bankruptcy Act, 1914.

What is Tender?

IT IS clear from the authority of *Poole* v. *Tumbridge*, 2 M. & W. 223, that the purported tender of the sum of £23 odd, in respect of the third instalment, was bad, inasmuch as the money was tendered after the date on which the instalment was due and payable. As PARKE, B., pointed out in *Poole* v. *Tumbridge*, *i.b.*, p. 225:—"It is clearly settled that the meaning of a plea of tender is that the defendant was always ready to perform his engagement according to the nature of it, and did perform it so far as he was able, the other party refusing to receive the money. *Hume* v. *Peploe*, 8 East 167, is a decisive authority that the plea must state not only that the defendant was ready to pay on the day of payment, but that he tendered on that day." There would seem no reason, however, why the bankruptcy court should not in such circumstances, notwithstanding that there has not been a legal tender, come to the conclusion, if an attempt at payment has been made and refused, that there is "sufficient cause" for dismissing the petition. Without actually deciding this point, however, the court in *In Re a Debtor*, *supra*, held that there was "sufficient cause" in the circumstances to dismiss the petition, because the attempted payment of the sum which would have left a balance of less than £50 was made after an invitation for payment by the creditor and before the bankruptcy had been served. As the court dismissed the petition on this ground, it found it necessary to deal with the further point whether the error in the bankruptcy notice invalidated the whole proceedings. The learned registrar held that the petition should be dismissed on this ground as well, but the error in question, it was submitted, would appear to be merely a formal defect or irregularity within s. 147 of the Bankruptcy Act, 1914, according to which section no such defect or irregularity is to invalidate the proceedings unless the court is of opinion that substantial injustice has been caused thereby, which cannot be remedied by any order of that court.

Indeterminate Sentences.

THE QUESTION of indeterminate sentences has been recently re-opened in the daily press. It is true there is nothing new in it. The system has been in force in parts of Australia, South Africa, and doubtless, elsewhere, for many years; and in this country it is applied in principle to habitual criminals sentenced to preventive detention, and to young offenders committed to Borstal or to Home Office schools, although in no case is the original sentence so indefinite as it is in South Africa, where, apparently, it takes the form of "detention during the Governor-General's pleasure." The real importance of elasticity of sentence lies not so much in its form as in its implications. It is a recognition of the fact that in many cases neither the court nor anyone else can say at the time of the conviction how long a period of incarceration is necessary, whether it be for the reform of the prisoner or for the protection of society. Where it is in force attention is usually concentrated on training and reform where that is possible, and on prevention of offences by continued confinement where there is serious mental defect or want of control without sufficient ground for certification. In short, indeterminate sentences and conditional release are properly associated

with the idea of imprisonment as a reforming influence rather than as punishment alone. This view of imprisonment is certainly gaining ground, and one curious result is that many sentences in courts of summary jurisdiction tend to become longer than formerly, because the object is not nowadays to deter by a short sharp lesson, but to keep the prisoner long enough to influence him for good. In consequence the administration of prisons has become so much milder than formerly that some people are wondering if prison is rather too pleasant a place. Some would still advocate short sentences under irksome conditions, "without bands and lectures," rather than long sentences with those ameliorations. A hundred years ago, when, as most people now believe, English prisons were still a scandal, and some improvement was being attempted, *The Times* recorded the utterance of a "worthy alderman" that, "if things went on improving at this rate, prisoners would shortly expect to find the floors of their cells covered with Turkey carpets and champagne at their repasts." But really, no one need seriously fear prison reform from this point of view. Men will always dislike loss of liberty, to say nothing of loss of reputation.

Trespassing Children.

Is an occupier of dangerous premises bound to take precautions against children trespassing thereon and coming to harm? This question is discussed in some detail and with great learning by the late Sir John Salmond in his classic treatise on Torts, and he comes to the conclusion that the humanitarian impulse which prompted such a decision as that in *Railroad Company* v. *Stout*, 1873, 17 Wall. (U.S.) 657, where the Supreme Court of the United States held that the occupier of premises is under a legal duty to take precautions to prevent harm coming to infant trespassers, will in the long run do more harm than good. It is true that an occupier may by his conduct be precluded from saying that a child coming on to his premises is a trespasser, as was the case in *Cooke* v. *Midland Great Western Railway of Ireland*, 1909, A.C. 229—a decision which has given rise to an immense amount of discussion. But, as Sir John Salmond truly said, the duty of preventing babies from trespassing upon a railway line should lie upon their parents and not upon the railway company. This common-sense view of the legal position is enforced by the recent decision of the Court of Session in Scotland in *Edwards* v. *London Midland & Scottish Railway Co.*, 1928, S.C. 471, where a boy of five years of age, who had obtained access to a railway siding by climbing over a wall, received fatal injuries in consequence of a stationary wagon on which he was playing being struck and set in motion by a runaway wagon the brakes of which had been released by two older boys. There were the usual allegations of "trap" and "allurement," but the court declined to hold that a relevant case had been made out on the pleadings. The very existence of the wall excluded the notion of a license by the railway company to children to get on to the line, and if the child was not a licensee there was no ground of action. Lord Hunter well said that "there seems to be an impression in certain quarters that, if a child of tender years meets with an accident, fatal or otherwise, on the premises of a stranger, the parent or guardian of the child may maintain an action against the proprietor or occupier of the premises, and be entitled to go to a jury, if only on his record he has made liberal enough use of the words 'trap' and 'allurement.' Such an impression appears to me to be an entire fallacy." A more hopeless attempt to fasten liability on a railway company than is disclosed in that case it is almost impossible to conceive.

MARRIAGE SETTLEMENTS.

It may interest the profession to know that draft forms of Marriage Settlements, settled by Sir Benjamin Cherry, LL.B., are now on sale. They are published by The Solicitors' Law Stationery Society, Limited, 22, Chancery Lane, W.C.2, and branches.

Bail Bonds of Surety Companies.

In most of the United States of America, corporations, known as fidelity or surety companies, may go bail for accused persons on remand or committal for trial. The corporation usually acts by someone designated as its attorney, though sometimes by an executive officer. Fees may be charged only at low fixed rates. In the City of New York the premium may not, for instance, exceed 3 per cent. (Cobb: the Inferior Criminal Courts Act of the City of New York, 1925, p. 217.)

Such a surety company is a corporate "professional bondsman," against whom English judges and magistrates have sternly set their faces, though with proper safeguards against abuses he is elsewhere found to be an exceedingly useful person.

It is usually accepted in this country that to be eligible as a surety a person ought to be at once substantial, and personally interested in the accused. If he be someone whom the latter will, from motives of affection or respect, be loth to "let down," so much the better. There is also the theory that the accused is in the custody of his bail, who may re-seize him; and it is felt that a solitary liability of friend or kinsman is likely to be more keenly felt, than one liability among many borne by a person who will be prepared to face an occasional bad debt in an extensive business. This argument will hardly hold where the professional bondsman or corporation employs, as in America in some cases, a body of alert agents with the very object of preventing evasion.

Apart from the merits of rival systems, it is interesting to consider how far our law would lend itself to the American practice, if our notions of policy were to change.

In the first place, although the professional bondsman is frowned upon, there seems no reason in law why he should necessarily be refused, provided he can be shown to be substantial enough to satisfy the bonds into which he enters in case his principals default. It is, indeed, illegal to indemnify a surety. Not only can money deposited as indemnity not be recovered: *Herman* v. *Jeuchner*, 1885, 15 Q.B.D. 561; 49 J.P. 502; but indemnifying bail is a criminal offence as involving a conspiracy to do an act tending to produce public mischief: *R.* v. *Porter*, 1910, 1 K.B. 369; 74 J.P. 159. The fee paid to the professional bondsman is not, however, by way of indemnity, even partial. It is simply an insurance premium.

Where the professional bondsman is to be a limited company or other corporation, other considerations apply.

In this country bail is, almost invariably, taken by way of recognisance, both of a principal and of a surety. It used to be argued that a corporation could not enter into a recognisance at all, the old notion of the personal nature of this bond being fatal to the capacity of a corporation to execute it. But recognisances are, after all, only a species of contract, and there would seem to be no logical reason for fettering corporations by refusing them the power to make such contracts.

Recognisances are sometimes called "contracts of record," and have been aptly described as "contracts entered into with the Crown in its judicial capacity" (Anson's Contract, 16th Ed., p. 68; Pollock, on Contracts, 9th Ed., p. 154). Blackstone speaks of a recognisance as "an obligation of record."

Convenience of practice proved too much for high and dry legal notions, and, for a great length of time, corporations have, as principals, entered into recognisances unchallenged, such as recognisances to prosecute an appeal, and this practice has found judicial approval in the case of *Leyton Urban District Council* v. *Wilkinson*, 1927, K.B. 853, where it is clearly laid down by the Court of Appeal that a corporation can enter into a recognisance by its authorised agent. Section 74 (2) of the Law of Property Act, 1925, and s. 76 of the Companies (Consolidation) Act, 1908, indicate how this authority can be given.

There is no difference in principle between a recognisance entered into as principal and a recognisance entered into as

surety. In each case the form is the same, the acknowledgment of a debt to the Crown enforceable upon breach of a condition by the principal; and we are forced to the conclusion that a corporation, including a limited company, could lawfully be accepted as bail in a criminal case, and lawfully enter into a recognisance enforceable by distress. Of course, imprisonment in default would be impossible, but so it is when a fine on a corporation remains unpaid and distress is unfruitful.

It is to be noticed that by s. 19 of the Interpretation Act, 1889, a person includes a corporation "unless the contrary intention appears." None of the statutes dealing with entering into recognisances uses the word "person" with reference to a surety; but a surety can only be a person, and if a corporation is a person, it seems to follow that a corporation can be a surety. The contrary intention does not appear.

It would be interesting if one of our large insurance corporations, anxious to do business on American lines, were, at the request of an accused person, to present itself as a would-be surety.

So great is the discretion of justices as to bail that they would possibly be upheld in refusal without reason given, but we think we have said enough to show that the application would at least have to be considered, and not ruled out as presenting a proposition manifestly outside the law.

Dr. Johnson and the Law.

AMONG the great books in English literature, BOSWELL'S "Life of Dr. Johnson" holds a unique place. Not only is it a biography, written with matchless skill, of a remarkable man, but it is also an encyclopædia of the social, political and literary life of the period. To those who are not familiar with its wonderful and lifelike portraits of the many notable persons who cross its pages, its length may appear a serious drawback, but even the slightest acquaintance with its contents shows it to be one of the most "dippable" of books, something of interest being found wherever one opens its pages. It is not too much to say that no man's education is complete without a study of this biographical masterpiece. To the lawyer it may be said to make a special appeal by reason of the frequency with which we find legal problems discussed in its pages; and at a season when the majority of practitioners are glad to lay aside their practice books, a few brief notes on this aspect of the work may induce many to take it up anew or to make its acquaintance for the first time. If they do, they will find their time pleasantly and profitably spent.

JOHNSON entertained a high opinion of the law as a science, and as a rule for the practical conduct of life, and more than once he expressed regret that he had not entered the profession. It is on record that on the death of Lord LICHFIELD, Sir WILLIAM SCOTT, better known to us as Lord STOWELL, said to JOHNSON: "What a pity it is, sir, that you do not follow the profession of the law. You might have been Lord Chancellor of Great Britain and attained to the dignity of the peerage, and now that the title of Lichfield, your native city, is extinct, you might have had it." Much agitated, JOHNSON exclaimed: "Why will you vex me by suggesting this when it is too late?" That JOHNSON, with his passion for argument and skill in dialectics would have made an excellent lawyer admits of no doubt, and, although BOSWELL tried to console him by saying that had he entered the legal profession we should have been without the Dictionary and the "Lives of the Poets," he, like so many others who have excelled in one sphere, but would rather have attained success in another, demurred to the suggestion and thought regretfully of the lost opportunity of reaching one of the high places in the law. But, although he was not of the law, he discussed its rules and practice time and again. BOSWELL loved to talk over legal questions with him, and more than once JOHNSON dictated to his disciple elaborate arguments to be placed before the Court of Session in cases in which BOSWELL was professionally engaged. At that time, it is essential to remember, written arguments were the rule in the Scottish Court, hence the prominence given to them in the old reports. We are told that in one case in which BOSWELL was counsel, Lord HAILES, one of the judges, was able to detect that another pen than BOSWELL'S had been at work, and, rightly guessing that it was JOHNSON'S, was critic enough to be able to identify exactly his part in the composition. In this connexion BOSWELL tells us that one of the other judges, when "in a merry mood," said to him: "My dear sir, give yourself no trouble in the composition of the papers you present to us, for, indeed, it is casting pearls before swine!" BOSWELL enjoyed the pleasantry, but nevertheless continued to invoke the aid of JOHNSON in the preparation of his written arguments, many of which may be found in the reports.

On various occasions the ethics of advocacy formed the subject of discussion between BOSWELL and JOHNSON. BOSWELL loved to call out his mentor's views on such topics. Should a lawyer ever undertake a cause which he is satisfied is not a just one? Posed with this question, JOHNSON delivered himself thus: "A lawyer has no business with the justice or injustice of the cause which he undertakes unless his client asks his opinion and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider what is the purpose of courts of justice. It is that every man may have his cause fairly tried by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; he is not to usurp the province of the jury and of the judge and determine what shall be the effect of the evidence, what shall be the result of legal argument." This, of course, is merely stating the general rule of every high-minded practitioner who regards himself as under a duty to the court as well as to his client, and his function as the placing before the judge the case for the client honestly and fairly, having regard to the evidence.

On the question of the propriety of a lawyer soliciting business, JOHNSON took the view that, while it is wrong to stir up law suits, when once it is certain that litigation must be initiated there is nothing wrong in a lawyer endeavouring that he shall have the benefit rather than another. He agreed that he would not himself, if he had been a lawyer, solicit employment, but this was because he would disdain to do it, not because he thought it wrong. He added, however: "I would not have a lawyer be wanting to himself in using fair means. I would have him to inject a little hint now and then to prevent his being overlooked." Not a few, we imagine, have, since JOHNSON'S day, acted, consciously or unconsciously, on his view and have contrived to "inject a little hint now and then to prevent their being overlooked." In so doing, have they transgressed any unwritten law of the profession?

JOHNSON has frequently been accused of narrowness in his views, particularly on religious subjects. On one occasion, he certainly exhibited a remarkable liberality of opinion. This was in discussing with BOSWELL a case in which the latter was instructed to defend at the Bar of the General Assembly of the Church of Scotland, a probationer to whose ordination objection had been made on the ground that some five years previously he had been guilty of immorality. Was this a sufficient ground for his exclusion from the ministry? was the question on which BOSWELL asked JOHNSON'S opinion. In JOHNSON'S view, the objection taken to BOSWELL'S client was not sufficient to disqualify him, for, as the sturdy old moralist observed, with equal humanity and Christian charity: "A man who is good enough to go to heaven is good enough to be a clergyman." It has sorrowfully to be added that this dictum did not find acceptance with the members of the General Assembly when they came to deliver judgment.

On the subject of law reports, JOHNSON much preferred those of Scotland to those of England, the reason being, as has been

already pointed out, that in Scotland at that time the reporters had before them the elaborate written arguments of counsel on each side, and these they drew upon with great liberality in the preparation of their reports. These arguments, with their copious extracts from the writings of the Roman jurists and their successors in Holland and France, strongly appealed to JOHNSON'S intellectual sympathies. He recommended a collection of Scots law cases upon subjects of importance—a recommendation which has since been carried out many times without, however, it must be said, exciting any great enthusiasm for them, even in the minds of lawyers. Like other reports, they are usually read merely for professional edification, not for intellectual delight.

These desultory gleanings from BOSWELL'S book may be fittingly closed with this great *dictum* of JOHNSON: "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

A Conveyancer's Diary.

Cost of Improvements to Settled Land: *Re Lord Sherborne*, 1928, W.N. 239.

Several important points arising in connexion with the difficult question of liability for repairs to settled land were considered by Tomlin, J., in *Re Lord Sherborne's S.E.*, 1928, W.N. 239.

The facts of the case were as follows:—The tenant for life of land subject to a pre-1926 settlement had expended (without submitting any scheme to the trustees) both before and after the commencement of the S.L.A., 1925, considerable sums of money in necessary repairs and improvements to farms, buildings and land comprised in the settlement. Among the improvements was the installation of a complete new electric lighting apparatus at Sherborne House. The tenant for life claimed to be recouped out of capital money in respect of the expenditure so incurred.

Further, a farm comprised in the settlement had been recently sold and out of the proceeds of sale of this farm the tenant for life claimed £1,000 as representing a sum attributable for tenant right valuation and as such due to him in respect of improvements carried out to the land.

Tomlin, J., held:—

(1) That the electric light installation (which had been installed after 1925) constituted an improvement authorised by the S.L.A., 1925. Accordingly he allowed the tenant for life to be recouped in respect of the expenditure upon this improvement.

(2) That the expression "improvements authorised by this Act," as used in ss. 83, 84 and 87 of the S.L.A., 1925, must be given their literal meaning, namely, "any improvement authorised by the S.L.A., 1925," and that if it is satisfied that the improvement in respect of which payment is asked is one of the particular kind authorised by the Act and is also satisfied in all the circumstances of the case that it ought to be paid, the court may order capital money to be expended thereon notwithstanding that the expenditure was made before 1926.

Accordingly the tenant for life succeeded in his application to be recouped in respect of pre-1926 improvements, subject, however, to a certain amount of "rebate" in respect of the diminution in the value of the improvements resulting from their being such as were liable to diminish in value in a short time and from their having been executed some time ago.

(3) That the claim in respect of the tenant-right valuation failed. It was not an improvement authorised by the S.L.A., 1925. On the contrary it was a claim of a "novel kind"; and the learned judge observed that "if he were to assent to any such proposition as that the tenant for life, who happened to be in occupation of land and cultivated it himself, was entitled to sell the land and make a bargain with the purchaser that some part of the purchase money should be treated as tenant-right belonging to the tenant for life, he would be opening up a very wide door for transactions which might be seriously impeached."

As respects the recoupment allowed to the tenant for life, the court directed that repayment should be made in accordance with S.L.A., 1925, s. 84 (4), and 3rd Sched., in fifteen years by half-yearly instalments.

It will be remembered that in *Re Gray*, 1927, 1 Ch. 242, Clauson, J., refused to interfere after trustees for sale (who now have the powers of a tenant for life under the S.L.A.) had elected to pay for repairs out of income; but that in *Re Robbins* certain repairs were directed by Tomlin, J., to be paid for by trustees for sale out of capital. These cases are commented upon at p. 423, *ante*, where it is observed that their result seems to be that where expenditure is incurred upon works being "authorised improvements," the trustees may properly pay for them out of capital. This view seems to be supported by the recent decision in *Re Lord Sherborne*.

Landlord and Tenant Notebook.

Meaning of "Fine or sum of money in the nature of a fine."

There are several statutory provisions which enact that no fine or sum of money in the nature of a fine shall be payable in certain circumstances, and as far as the law of Landlord and Tenant is concerned, reference may be made to s. 8 of the Rent Act of 1920, which prohibits a person from requiring the payment of any fine, premium or any other like sum in addition to the rent in respect of premises coming within the Rent Acts; s. 144 of the Law of Property Act, 1925, which provides that in all leases, etc., containing a covenant, etc., against assigning, underletting or parting with the possession of the demised premises without licence or consent, no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; and sub-s. (3) of s. 19 of the Landlord and Tenant Act, 1927, which similarly provides that no fine or sum of money in the nature of a fine shall be payable for or in respect of any licence or consent by the landlord to the alteration of the user of the premises.

It may be as well therefore to examine the meaning of a "fine or sum of money in the nature of a fine."

The Law of Property Act, 1925, s. 205 (1) (xxiii), purports to define the expression "fine" as including a "premium or foregift and any payment, consideration or benefit in the nature of a fine, premium or foregift."

Moreover, there are certain decisions of the courts in which the meaning of the expression has been considered.

In *Re Cosh's Contract*, 1897, 1 Ch. D. 9, a lessee under a building contract applied for a licence to assign, but the lessors refused to grant the licence unless the lessee deposited the sum of £2,000 as a security for the performance by him of that part of the building contract, which also applied to other property, still remaining unperformed. It was held by the Court of Appeal that the requirement of the security was not the requirement of a fine or sum of money in the nature of a fine. The *ratio decidendi* of this case is very clearly explained in the judgment of Lord Russell, C.J., who said (*ib.* at p. 14): "Section 3 of the Conveyancing Act, 1892, plainly enacts that a covenant not to assign without licence shall be read as containing a provision that no fine or sum of money in the nature of a fine shall be payable for granting a licence." Now, was this a fine or sum of money in the nature of a fine payable in respect of the licence? The section points at a sum of money which is to go irrevocably into the pocket of the lessor. Here there was only a deposit, not a payment which transfers the title to the money and

enables the payee to hold it as his own. If the lessee performs the contract the money deposited will come back to him. We conclude that the sum so paid is not a fine or sum of money in the nature of a fine.

In *Waite* v. *Jennings*, 1906, 2 K.B. 11, the lessor to whom application was made by the lessee for licence to assign required as a condition of the grant of his licence that the assignee of the lease should covenant to pay the rent and to perform the covenants of the lease for the residue of the term.

Subsequently to the assignment, the lessor brought an action against the assignee for arrears of rent accruing due after the assignment. It was considered by the majority of the court that the covenant by the assignee was not in the nature of a fine on the ground that the covenant secured to the lessor no further sum of money beyond the rent to which he was entitled under the lease. The dissenting judgment of Fletcher Moulton, L.J., on this point, however (*ib.*, at p. 18), is worthy of consideration.

The meaning of the expression "fine" was again considered recently in the case of *Gardiner & Co., Ltd.* v. *Cone*, 1928, W.N. 235. Mr. Justice Maugham held in that case that the requirement as a term or condition of giving consent to an assignment of a licensed public-house, that the premises should for the future be tied for all malt liquors to the landlord, was a fine, the learned judge being of opinion on the authorities that a wide meaning should be given to the expression "fine" so that that expression should include the benefit conferred by a stipulation for the giving of a tie in the case of a public house.

In conclusion it might be noted that such statutory provisions, which merely provide that no fine or sum of money in the nature of a fine is to be payable, often prove to be of no effect, since they do not make the payment of a fine illegal, and therefore leave it open to the parties to agree that a fine should be paid (cf. *Andrew* v. *Bridgeman*, 1907, 2 K.B. 494, on this point).

Our County Court Letter.

LIABILITY OF UNDISCLOSED PRINCIPAL.

THE difficulty of knowing whom to sue was illustrated in *Gardiner* v. *Heading and Digby*, 1928, 2 K.B. 284. The plaintiff had done some building work for the Finance Guarantee Co., Ltd., of which the defendant Heading was a director, and on applying for payment he was told by Heading that another job was waiting. The plaintiff received his fresh instructions from Digby, but they were confirmed by Heading, and the plaintiff submitted estimates addressed to the Finance Guarantee Co., Ltd., thinking that company was the principal. The plaintiff did the work and sent in his account to the Finance Guarantee Co., Ltd., but was told that the work had been ordered by the Metropolitan Housing Corporation, Ltd. Being unable to obtain payment from either company, the plaintiff sued both defendants personally, and the county court judge at Westminster found the facts as follows: The work was ordered by Heading, but not exclusively as agent for the Finance Guarantee Co. Ltd. Heading did not expressly undertake personal liability, but did so impliedly at all times, and though the plaintiff gave credit to the Finance Guarantee Co., Ltd., under a mistake, he never gave exclusive credit to that company so as to bind himself to look to it. On these findings judgment was given for the plaintiff, and was upheld by the Divisional Court, Mr. Justice Shearman and Mr. Justice Finlay. The defendant Heading appealed on the ground that he contracted as agent only, and it was contended that the fact of a person being the mouthpiece does not necessarily imply that he is to be liable upon the contract. Lord Justice Scrutton pointed out that the person who orders work is *prima facie* liable to pay for it, and that it is not always important to ascertain to whom credit was given. If a person contracts in his own name, but an undisclosed principal is afterwards discovered, the latter may be sued although credit was not given to him. The reverse also holds good, so that a man who contracts with another, thinking he is the agent, can sue him when he is found to be a principal. As the plaintiff had not given exclusive credit to the Finance Guarantee Co., Ltd., the defendant Heading was liable. Lord Justice Sankey agreed that the entries in the plaintiff's books, showing that he gave credit to the Finance Guarantee Co., Ltd., were discounted by other evidence that Heading had made himself personally liable. Mr. Justice Romer concurred in dismissing the appeal.

The above affords an interesting example of the application of old principles to modern conditions. In *Cundy* v. *Lindsay*, 3 App. Cas. 459, the plaintiffs had sent goods to a man named Blenkarn, who had imitated the signature of a firm named Blenkiron & Co., and had afterwards sold some of the goods to the defendants. The House of Lords held that no contract was made with Blenkarn, so that he never had a title which he could transfer to the defendants, who were therefore liable for conversion of the goods. This decision was the basis of an argument for the defendant in the first-named case, *supra*, that by reason of its consensual nature there cannot be a contract between a person and another with whom he never intended to contract. As against this, however, there were the findings of fact that the plaintiff did not give exclusive credit to the Finance Guarantee Co., Ltd., and that Heading stood by and did not undeceive the plaintiff as to whom he was working for. In "Smith's Leading Cases," 12th ed., vol. 2, p. 368, it is stated that where the principal is in existence, but the supposed agent has no authority from him, it is now well established that the supposed agent cannot himself be treated as a principal, so as to be sued on the contract, unless the latter can be construed as made by the supposed agent personally. The courts adopted the latter construction in the recent case, which might also have been decided on the ground of breach of warranty of authority, except for the fact that the action was originally started by a specially indorsed writ. There was thus a technical difficulty, as an action for breach of warranty of authority sounds in damages. As this is the only available remedy against an agent, when he cannot be sued personally on the contract, it is advisable not to issue a specially indorsed writ in circumstances similar to the above.

Practice Notes.

INCOME TAX ON EARNED INCOME.

THE relief provided by the Income Tax Acts against assessments on earned income bristles with pitfalls, and is not without the anomalies which have come to be regarded as part of all sections of income tax practice. A point which requires the attention of the Legislature in this connexion arises where the beneficiaries of an estate carry on a business for the executors. Here no earned income relief is granted, and recent cases which have come to our notice emphasise the injustice which frequently results. For instance, a taxpayer may leave his business to a son who has worked in it in a managerial capacity for many years; indeed, the son may be a sole beneficiary under the will. Yet, if the executors appoint that son to manage the business on their behalf pending the winding up of the estate, the profits from the business are assessed to income tax without allowance of relief in respect of earned income or of the reduced rate of tax. It may be well to remember that, in addition to the obvious case of income which is regarded as earned, income from property which forms part of the emoluments of an employment, e.g., where a clergyman occupies a house, rent free, with power to let, is treated as earned income in computing his income tax liability. All income arising under Schedule B where land is occupied solely for the purposes of husbandry,

and all pensions, superannuation, deferred pay, and so forth, given in respect of the past services of the recipient, or of the husband or parent of the recipient, are also included in the definition of earned income.

APPORTIONMENT OF ROAD MAKING CHARGES.

THE borough magistrates at Walsall recently dealt with objections by the Earl of Bradford and others to orders made by the corporation apportioning the costs of making Lincoln-road, Chuckery. The main question was whether or not Dark-lane, which had been superseded by Lincoln-road, was repairable by the inhabitants at large. The corporation alleged that this was an accommodation road, which had never formed an approach to any other road, and was a cul-de-sac, as shown on the ordnance maps. No liability to repair the lane had ever been recognised by the local authority. Old residents gave evidence that Dark-lane, which was near the old cricket ground at the Chuckery, had always come to a dead end. Though extending towards the road to Sutton Coldfield, it had never actually afforded any communication, but it was admitted that deeds of adjoining land showed a strip at the end of Dark-lane which appeared to have no owner, and was spoken of as "no man's land." On behalf of the objectors other old residents gave evidence that the public had always had free access to Dark-lane, which was stated to be an old highway formerly giving access to the Sutton Coldfield road. Ancient maps were produced, from which it appeared that Dark-lane extended to the London-road, which was the same as the Sutton-road. A map of Staffordshire dated 1775, from the British Museum, and a "map of 25 miles round Birmingham" dated 1788, were among those relied upon. An architect stated that, on surveying the old road, he found traces of its having had in places a width of 21 feet, which was unusual for an accommodation road. He considered that the connexion with the Sutton-road was probably stopped, by reason of its being used in order to avoid payment of toll on entering Walsall, as there was once a toll-gate at the present junction of the Birmingham and Sutton roads. The magistrates reserved their decision, and at the adjourned hearing the chairman announced that they were unanimously of opinion that the road was a highway repairable by the inhabitants at large. The claims of the corporation therefore failed.

TRAWLER BOILERS.

THE need for reform with regard to the inspection of the above was revealed in a recent inquiry at Grimsby. An explosion had occurred off Spurn Head in the trawler "Bessie," and two enginemen had lost their lives. The skipper had never taken adequate precautions with regard to the safety of the boiler, having merely specified certain repairs which were executed by a boiler-maker. The latter had not made an examination, that being beyond the scope of his work, and by reason of age and corrosion the boiler shell was in fact too weak to stand the steam pressure. As a result of control by inexperienced persons, unskilled in technicalities, and in the absence of qualified inspection for some years, the boiler had become a source of danger. It was wholly unfit for generating steam, but there was nothing to prevent vessels of that class going to sea in an unseaworthy condition. The Commissioner (Mr. ARCHIBALD BENCE-JONES) found on the above facts that the skipper was to blame for negligence leading to loss of life, and ordered him to pay £50 towards the costs of the inquiry. The learned Commissioner suggested that a corporate body or society should be given power to appoint qualified surveyors and to undertake periodical surveys of uninsured vessels.

"THE ORGANISATION OF A SOLICITOR'S OFFICE."

In reply to numerous inquiries, we shall resume the publication of this series in our issue of Saturday, the 15th instant.—ED., *Sol. J.*

Correspondence.

Points in Practice.

Sir,—In reference to your reply to *Q.* 1358, how do you reconcile the statement that the administrators could deal with the infant's moiety under s. 42 of Administration of Estates Act, 1925, with the decision in *Re Jerburgh*, and the notes thereon in "A Conveyancer's Diary," in your issue of the 11th inst.?

It is obvious from the information supplied in the question that the infant is unmarried and therefore only contingently entitled.

Gray's Inn, W.C.1. A. W. O.
20th August.

Sir,—This question was in fact answered before *Re Jerburgh*, W.N. 1928, p. 208, was heard. The answer to the above question, however, except the first three lines, appears to be in exact accordance with the decision, for, the residue in the case put in the question being personalty, the vesting assent mentioned in the question would not be necessary. If the bondsmen are freed, it is, of course, of no consequence to them whether the administrators hold as trustees under s. 42 or otherwise. As to the operation of s. 42 on intestacy see "Everyday Points in Practice," p. 487, Case 12, where the exact point decided by Romer, J., is discussed. The answer given contemplated a wider interpretation to the section than that of Romer, J., but was carefully guarded by the proviso that it was not safe to assume the wider view. The comment may be made that if Romer, J.'s, interpretation prevails, s. 42 will practically cease to apply to intestacies, since so few infants marry.—YOUR CONTRIBUTOR.

Old-Time Precedents.

Sir,—I recently acquired an interesting book—one of seventy for which I paid half-a-crown at a country auction. It was published in 1655, and is entitled: "The Perfect Conveyancer: or Severall Select & Choice Presidents." These are described as being "collected by Four several Sages of the Law: Edward Henden, Knight; William Noy, Attourney Generall to his late Majestie; Robert Mason, sometime Recorder of London; and Henry Fleetwood, formerly Reader of Grayes-Inne."

The preface runs as follows: "Courteous Reader," 'Tis honour that nourishes Arts, & surely I may without the least guile of flattery confidently affirm that it was a noble and lawful emullation, to purchase unto themselves deserved honour that made these venerable Sages of the Law, by their indefatigable labours, to become so transcendent in knowledge . . . And sure if there be any study, one more mysterious than the other, the Law will in no kind challenge the second place: How much then they deserve, that have enucleated so grand a mystery? nay more, well remembering that they have with no small pains; nay, I may justly affirm, with an Herculean labour, brought to light so many rich and unparalleled gems of knowledge as are here commended to thy publique view; A work no lesse usefull than commendable; it were to light a candle at noone day, to speak in the praise of that which abundantly speaks its own worth; & not to commend the authors were to discommend my own judgement, who am a true lover and willing student of so noble, so necessary, so deservedly commendable a Science . . . As this work was written for the Weale-Publiques good, so I wish it may publickly be entertained. And thus I silence to speake more, because it doth highly speak its own worth. All I shall crave from the knowing Reader is, first to read, then censure. Farewell. Thine, if thou art a candid Lover of the Law,

R. M., Barrister of that Honourable Studie."

To which the "stationer" poetically adds: "Here are happy Presidents, selected out of the choicest of former Ages;

and although the Law be a Labyrinth, yet here is an Ariadne's Thred to lead thee out of it; Buy it freely, 'tis for thy own profit, as well as mine, it being a Golden Library, taken out of the principles of Law, which thou mayest purchase for a reasonable summe of Silver; 'twill counsell thee, without a Counsellor's Fee; 'tis then (if I mistake not) good policy, to lay out some money, upon such terms as will bring in such gallant usury. Farewell, T.G."

Such an illustration of the customs of writers and publishers of legal works may prove of interest to some of your readers.

Oxford. D.

Mortgagees and Sub-lessees under the Law of Property Act, 1925.

Sir,—Under the Law of Property Act, 1925, the position of mortgagees and sub-lessees of certain kinds of leasehold property, in the event of the bankruptcy of the original lessee, appears to be a very precarious one. In fact, the position of a mortgagee and sub-lessee of certain kinds of leaseholds seems to have been brought back to what it was before the passing of the Conveyancing Act of 1892. The more important of the particular kinds of leasehold properties affected are agricultural leases, mining leases, and leases of public-houses and beer shops.

In the case of such properties, s. 146 of the Law of Property Act, 1925, seems completely to take away the power of the court to grant relief to mortgagees and sub-lessees.

Apparently, this result has been brought about through an error in draughtsmanship, but it is submitted that the result causes a serious situation.

The power of the court, under s. 14 (2), of the Conveyancing Act, 1881, to grant relief to a lessee in certain cases, did not extend to forfeiture caused through the bankruptcy of the original lessee. And it was held that the section did not enable the court to grant relief to a sub-lessee, whether the forfeiture of the head lease was caused through the bankruptcy of the original lessee or through any breach of covenant (*Cresswell* v. *Davidson*, 56 L.T. 811; *Burt* v. *Gray*, 1891, 2 Q.B. 98).

In order to remedy this state of things, s. 4 of the Conveyancing Act, 1892, gave power to the court to grant relief to underlessees, and it was held that that section applied in favour of sub-lessees even in the class of case in which no relief against forfeiture could be granted to the head lessee, e.g., where the forfeiture of the head lease was occasioned by breach of the covenant not to assign, etc. See *Cholmeley School* v. *Sewell*, 1894, 2 Q.B. 906; *Imray* v. *Oakshette*, 1897, 2 Q.B. 48; *Cohen* v. *Tanner*, 1900, 2 Q.B. 609.

In the Conveyancing Act of 1892, s. 4 stood uncontrolled by any exception; but the draughtsman of the Law of Property Act, 1925, thought fit to make one section (146) a complete code of the law relating to relief against forfeiture of leases. Accordingly, the old s. 4 of the Act of 1892, was reproduced with a slight addition as sub-s. (4) of s. 146 of the Act of 1925. But, by virtue of sub-s. (9) of that section, the entire section does not apply to a condition for forfeiture on the bankruptcy of the lessee in the case of the particular kind of leasehold properties above mentioned. The result is that sub-s. (4) of s. 146 must, in my submission, clearly be construed as affording no relief to sub-lessees or mortgagees of the class of property in question.

The matter is rendered still more serious owing to the circumstance that under the new system of creating mortgages it is no longer possible to vest the entire original term in the mortgagee. Whether the mortgage is created by a term of years or by legal charge, the effect is that the mortgagee, under the new system, takes a term less than that of the mortgagor, so that the old ruling that the forfeiture condition on bankruptcy only applied whilst the term remained vested in the bankrupt, no longer affords any help to a mortgagee. Moreover, by virtue of the interpretation clause of the Act of 1925 (s. 205) (1), bankruptcy means, in relation to a corporation, the winding up thereof, thus following the old law. Accordingly, the provisions of the Law of Property Act, 1925, require careful consideration by practitioners called upon to advise mortgagees or intending mortgagees of the numerous class of persons and limited companies interested in public-houses, agricultural leases, etc.

The old peril of losing a sub-lease through bankruptcy of the original lessee thus reappears in the case of certain classes of leasehold property.

London, W.C.2. ARTHUR HORNER.
22nd August.

Obituary.

MR. J. B. MATTHEWS, K.C.

Popularly known as "J. B.," Mr. Joseph Bridges Matthews, K.C., Recorder of Dudley, and one of the best known figures at the Bar, met his death under tragic circumstances on Sunday, the 5th August last. Born at Worcester in 1862, he was educated at Worcester Cathedral School and practised in that city as a solicitor until called to the Bar at the Middle Temple in 1896, previously serving for a year as Sheriff of Worcester.

He took silk in 1913, and was appointed Recorder of Tewkesbury a year later, retaining that appointment until 1923, when he was made Recorder of Dudley, and was elected a Bencher of his Inn in the following year. He went the Oxford Circuit for some time and it can certainly be said of him that he practised with great distinction in the Royal Courts of Justice. He was an expert in certain branches of law (upon which he had written several books and treatises), some in which he specialised being the law relating to money lending, married women and covenants in restraint of trade. He was also joint author of Pritchard's "Quarter Sessions" and editor of two editions of that well-known work "Hayes and Jarman on 'Wills.'"

The rapidity with which he delivered his speeches at the Bar in highly technical and complicated cases was often the despair of even the most expert shorthand-writers.

He had the distinction conferred upon him of the bronze medal of the Royal Humane Society and the circumstances under which it was awarded him, when only seventeen years of age, he himself related in a speech a few years since at the annual dinner of the old boys of the Cathedral School as follows: "It was in January," he said "and the Severn had been frozen over. Tugs coming up the river had broken up the ice on one side, and looking over the bridge I saw what I thought was a retriever dog in the water. Then I discovered it was a man. Without thinking, I dived in. Swimming to him, I collared him. It was icy cold, and we lost almost all power of movement. I was just able to snatch at a rope which a sergeant of police threw to me, and with one hand I seized it and held the drowning man with the other. We were pulled ashore and dried in the sergeant's cottage near by."

He was a man of great vitality and wonderful endurance, with a genial manner and natural kindness of heart which endeared him to a very wide circle of friends, who now mourn his loss.

At the subsequent inquest it transpired that Mr. Matthews had been suffering from ill-health and depression for some time and it appeared that after luncheon on the day of his death he went for a stroll in the garden, and, returning to the house, went to the gunroom, where his body was found a few minutes later by his wife with a double-barrel sporting gun containing one spent cartridge by his side. H.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Holiday-maker's Illness AND LIABILITY FOR HIRE OF LODGINGS.

1375. *Q.* A engages rooms in advance at the seaside for a week's holiday, which he intends to spend with his wife and child. Two days before his holiday commences, he is taken seriously and suddenly ill and is removed to hospital. Can the proprietor of the rooms enforce payment of the week's hire?

A. The contract in the above case is in the category of conditional, as opposed to absolute contracts. The basis upon which the rooms are taken is that the hirer is seeking rest and recreation, a condition precedent to which is that he shall be at least fit to travel. The case is therefore distinguishable from an ordinary letting, where the owner of the rooms is not aware of any particular purpose for which they are required. It should be noted that in any case the proprietor of the rooms would only be able to recover the amount of actual loss, so that if the rooms are re-let a claim can only be made for the days during which they were vacant. The hire in the above case had apparently not become payable at the date of the illness, and the relevant decision is therefore *Krell* v. *Henry*, 1903, 2 K.B. 740, and not *Chandler* v. *Webster*, 1904, 1 K.B. 493, and A is not liable.

Administration of Estates Act, 1925, s. 51.

Q. 1376. In the case of a lunatic of full age dying intestate since the Act, leaving a freehold dwellinghouse to which, on the lunatic's death, the administrator is beneficially entitled as heir-at-law, is it necessary, in order to effect the vesting of the property in him beneficially, for the administrator, in his capacity of personal representative, to assent to such vesting, or is an assent unnecessary?

A. While we do not think that an assent is essentially necessary, we consider that it is eminently desirable. It should be noted that it is only the provisions of Pt. IV of the Act which do not apply to the beneficial interest in real estate of the lunatic.

Friendly Society—MORTGAGE—VACATING RECEIPT—FORM AND EFFECT.

Q. 1377. We are acting for the purchaser of certain freehold property. On investigating the title, it appeared that the vendor had mortgaged the property to a friendly society, but such mortgage had quite recently been paid off, the old form of statutory receipt under the Friendly Societies Act being endorsed. This receipt does not comply with s. 115 of the L.P.A., 1925, or the form of receipt set out in Sched. III to that Act, inasmuch as it does not state by whom the money was paid. We made a requisition drawing attention to sub-ss. (1), (5) and (9) of s. 115, and requested that the receipt be amended. The vendor's solicitors, seemingly on the ground that the mortgage term, *ipso facto*, ceases on payment of the money, contend that the receipt is quite sufficient. Nevertheless, they have approached the friendly society's solicitor to have the receipt amended. The latter, however, states that he is not prepared to advise the society to make any alteration; that the receipt is quite in order and effectually discharges the mortgage, and he is surprised that we have any doubts at all in the matter. It has been stated—we do not know with what degree of accuracy—that the Registrar of Friendly Societies contends that the new Act does not affect statutory receipts given by friendly societies. Certainly this is quite inconsistent with sub-s. (9) of s. 115?

A. The better opinion appears to be that s. 115 of L.P.A., 1925, only affects the operation, as distinct from the form, of the statutory receipt of the friendly society (see an article in our contemporary, "Law Notes," Vol. XLVI, Pt. I, January, 1927, pp. 18 *et seq*). If this view is correct it is unnecessary to state by whom the payment was made. If, on the other hand, this view is incorrect, the old form of receipt is evidence (though not of the highest order) of the discharge of the mortgage money and the consequent satisfaction of the mortgage term, if any (L.P.A., 1925, s. 116). We would observe that where the mortgage is by way of legal charge it is doubtful whether any mortgage term is in fact actually created (L.P.A., 1925, s. 87 (1)).

Apportionment of Rent—WHETHER ON A YEARLY OR QUARTERLY BASIS.

Q. 1378. We are acting for the owner of some property which has been let on a yearly tenancy at £20 a year, payable half yearly at Whitsuntide and Martinmas (movable according to the calendar). It was held up to the 7th January, 1928, by trustees upon trust for a man during his life. The tenant for life died on the 7th January, 1928 (namely, fifty-seven days after Martinmas), the previous half year's rent having been paid to him at Martinmas, 11th November, 1927. The number of days between Martinmas (11th November), 1927, and Whitsuntide (27th May), 1928, was 198, and we claim on behalf of the present owner that the apportionment due to the estate of the tenant for life should be calculated as 57/198 of £10 (the half year's rent). The solicitors for the executors of the tenant for life, however, state that it should be apportioned according to the days of the year, viz., 57/366 (days in leap year), × £20 the year's rent. By the former method the apportionment in favour of the executors would be £2 17s. 6d., but if calculated according to their contention it would be £3 2s. 3d. We have a note that there is an opinion that the second method is correct in the "Law Times" for the 15th January, 1916, but we have not a copy in our office. On the other hand, the opinion stated in the "Law, Practice and Usage of the Solicitors' Profession," published by The Law Society in 1923 (p. 190) is to the effect that the first method above mentioned is correct—namely on the basis of the actual number of days in the period covered by the rent payment—half year, or quarter. This opinion of the Council of the Law Society is dated the 11th January, 1900. Can you tell us which is correct, and can you give us any authority on the point?

A. The case dealt with by the Council of The Law Society was one in which a purchaser had made default in completion and the vendor elected to take the rents instead of interest. The decision, as between the parties and on the facts, was that the quarter's rent only was to be taken into account, which caused a difference in favour of the vendor of 1s. 1d. a day. The answer given in the "Law Times" related to a case between a landlord and tenant, where a question arose as to the proportion of a yearly rent payable in respect of a broken period between quarter days. It was pointed out that under the Apportionment Act, 1870, a yearly rent accrues from day to day, and is apportionable accordingly, and that the expression "a quarter's rent" is convenient but misleading. There appears to be no authority on this point, but as there has been no default in the case put, the apportionment should be on the yearly basis, and the contention of the executors is correct.

Accident in Unadopted Road—Liability of (*a*) Householder; (*b*) Landowner.

Q. 1379. A doctor takes a lease of property for a term of five years from the 29th September last for the purposes of his medical practice, and covenants to keep the premises (except the main walls and roofs of the buildings) in such good and substantial repair as the same were in at the commencement of the term, damage by fire and storm only excepted, and the same, except as aforesaid, in such good and substantial repair and condition to deliver up to the landlord at the end of the term. The landlord covenants at all times during the said term to keep the outer walls and woodwork and roofs of the demised premises in proper and substantial repair. The roadway and path in front of the demised premises has not yet been taken over by the local authority, and that part thereof immediately in front of the demised premises is the property of the landlord. At the commencement of this year the tenant complained to the landlord of the dangerous state of the footpath and the likely injury his patients might sustain when coming to consult him should they trip over the loose boulders in the path or put their feet into one of the many pits there, and requested the landlord to have the path properly repaired, intimating that he would have to hold the landlord responsible for any claim that might be made against him by his patients for injuries sustained. The landlord ignored the notice. Recently the tenant's wife tripped over one of these boulders in the footpath and broke her ankle. It must be borne in mind that the lease of the property did not include the road or the path, nor any right of way thereover, but there being no other means of access to the property the tenant would have an implied right to use the road and path.

(1) Has the tenant, and on what authority, any claim upon the landlord for the injury sustained by his wife?

(2) Would patients have a claim against the tenant for injury sustained by them, and what redress would the tenant have against the landlord?

A. The question does not state whether the accident happened in daylight or darkness, or whether the road is still under construction, or merely badly finished. In *Oldham* v. *Sheffield Corporation*, 1927, 136 L.T. 681, the Court of Appeal held that the landowner was under a duty to warn an invitee upon a private road, after dark, of the existence of a concealed trap. In *Coleshill* v. *Manchester Corporation*, 1928, 1 K.B. 776, the Court of Appeal held that the landowner was not liable to a mere licensee, who was on a private road at dusk, and fell into a trench which was not in the category of a concealed danger or trap. The doctor's wife, being an inhabitant, would probably be held guilty of contributory negligence, and the landlord would not be liable. The doctor would not be liable to his patients, as if they are hurt in the road, he is not the landowner. His easement of necessity does not create liability to co-users of the right of way. The landowner would not be liable to the patients, as in regard to him they are not invitees, but mere licensees. As the whole road is obviously bad, no particular boulder or pit can be called a concealed trap.

Landlord and Tenant Act, 1927—Claim for Compensation—Tenancy expiring 25th March, 1929—Failure to serve Notice on Sunday, 25th March, 1928.

Q. 1380. A is a tenant whose lease expires on the 25th March, 1929. In order that he might obtain the benefit of the new Landlord and Tenant Act, it was necessary for him to serve one year's notice upon his landlord. As you are aware, the Act came into force on the 25th March this year, a Sunday. The tenant was consequently unable to serve the notice, both under the Act and within the necessary time. Has he lost his right to compensation?

A. It must not be too readily assumed that because the 25th March, 1928, fell on a Sunday, that notice could not have been served on that day: see *Sangster* v. *Noy*, 16 L.T. 157. Sir J. Eardley Wilmot, County Court Judge, held that a notice by a tenant of intention to quit premises, was good, though given on a Sunday, and Ridley, J., in *Child* v. *Edwards*, 1909, 2 K.B. 753, said that although *Sangster* v. *Noy* was not binding on him, as it was not decided by the High Court, he was inclined to agree with the learned county court judge. Notice could not have been served on the Sunday by registered post, but it might have been served personally or by leaving it at the landlord's last known place of abode: see s. 23 (1) of the Act. We understand that others similarly situated served notice in this manner on the Sunday, and to make doubly sure, served a further notice on Monday, 26th March. We take the view that by failing to serve notice either on the Sunday (which is the course we, ourselves, have recommended: see Sol. J., 72, 195), or on the Monday, the tenant in question has lost his right to compensation, and we know of no amending Bill, which will have the effect of restoring it.

Trustee—Ex Officio—Retirement—Re-appointment.

Q. 1381. By a scheme established by order of the Charity Commissioners, two ex-officio trustees (the lord of the manor of the parish and the rector thereof), three representative and four co-optative trustees were appointed trustees of the charity estates of a parish the management of which was vested in them, but the freehold estate was vested in "The Official Trustee of Charity Lands." There was a provision in the scheme that the trusteeship of the representative and co-optative trustees could be determined (*inter alia*) by a communication in writing to the trustees. Some land belonging to the trustees was recently offered for sale by auction, and as it adjoined the lord of the manor's estate he resigned his trusteeship in case he might wish to bid for it. The land was not sold to him, and the point arises, is he still a trustee? Can an *ex-officio* trustee, who is appointed by virtue and in right of his office, effectually resign his appointment, and if he can, what is necessary to be done to reinstate him?

A. There seems to be no direct authority governing a case of this character. In the first place, it should be pointed out that a trustee cannot buy, or retire with a view to buying, trust property. Fortunately the retired trustee did not in this case buy. As respects the retirement, the opinion here given is that T.A., 1925, s. 39 (1) enabled the *ex-officio* trustee to retire, for there does not appear to be any contrary intention *expressed* in the trust instrument: see T.A., 1925, s. 69 (2). Accordingly, his retirement was effectual. The persons having power to appoint new trustees should now appoint him as a new trustee.

Vesting Deed under Derivative Settlement—S.L.A., 1925, s. 110.

Q. 1382. (1) Does the will of A, who died prior to 1926, by which land was settled on his wife for life with the remainders over, coupled with a settlement of the estate in remainder, constitute a compound settlement, and if so can a purchaser from the life tenant of the settlement of the remainder after the death of the wife call for an abstract of the settlement of the remainder?

(2) If there is no compound settlement, is the first vesting deed under the settlement of the remainder a second vesting deed for the purposes of s. 110 of S.L.A., 1925, a vesting instrument in favour of the deceased wife under the will having been executed?

A. (1) We think that as there was a complete settlement followed by a derivative settlement the will settlement alone was the settlement for the purposes of S.L.A., 1925 (*vide* Chitty's Statutes, vol. 23, Property Acts Supplement, Note *c*, p. 428, and cases there cited). We think the purchaser is entitled to an abstract of the derivative settlement (*vide* (2) below).

(2) The will settlement appears to have come to an end (S.L.A., 1925, s. 3), and it appears necessary for the S.L.A. trustees under the will to execute a discharge. If this is done the purchaser would not be directly concerned with the will settlement, but would buy under the derivative settlement and would therefore have to regard the vesting instrument under the derivative settlement as a first vesting instrument for the purposes of S.L.A., 1925, s. 110.

Undivided Shares—Tenancy in Common—Right of Survivorship expressly given—Vesting.

Q. 1383. A, who died in 1907, by his will devised his real estate to his children B, C, D and E in equal shares. The will, which was "home made," continued: "As each of my four children B, C, D and E die their share shall fall to those of my four children remaining living until there is only one living and the last surviving son or daughter out of the four above mentioned is to have all my estate absolutely." One of the children died in 1925 and the three survivors are now selling under the statutory trust for sale. The practical effect of the will is to create a joint tenancy, but it appears possible to construe it as giving life interests to the children, with remainder to the last survivor. Is it quite clear that the property vests under para. 1 (2) of Pt. 4 of the 1st Sched., and not under para. 1 (3) or 1 (4), in either of which cases the appointment of new trustees would be necessary?

A. We do not consider that upon the true construction of the will a joint tenancy was created or a settlement established. "There may . . . be a tenancy in common with the benefit of survivorship expressly given . . . This is a perfectly distinct estate from a joint tenancy and has different incidents to it . . ." (Tudor's Leading Cases in Conveyancing, etc., 4th ed., p. 286, and cases there cited). We are, therefore, of opinion that on 1st January, 1926, the legal estate vested in the three surviving children upon the statutory trusts under L.P.A., 1925, Sched. I, Pt. IV, para. 1 (2).

Apportionment of Rent of Controlled House.

Q. 1384. Has *Catto* v. *Curry*, 1926, 1 K.B. 461, been reversed or at all adversely commented upon or is it still law. If so, please furnish authority. (2) Where can one find a statement of the considerations to guide a registrar in the apportionment of rent under the Increase of Rent, etc. Act, 1920, s. 12 (3)? (3) What is the usual order made as to the costs of the application?

A. (1) *Catto* v. *Curry* was approved in *Doulin* v. *Purcell*, 43 T.L.R. 140, and *Oakley* v. *Wilson*, 1927, 2 K.B. 279, and is still law. (2) As each case depends upon its own facts, there is no recorded statement, but the rent of each room or floor should bear the same proportion to the total rent as the part occupied by the tenant bears to the whole house, except that the higher the floor the lower should be the proportion of rent. (3) Costs follow the event, so that if the tenant secures a reduction the landlord should pay the costs; if the existing rent is confirmed the tenant should pay the costs, or, if circumstances warrant it, each party may be ordered to pay his own costs.

Several Fishery in Gross to Centre of River.

Q. 1385. By a certain conveyance land adjoining a river was sold, with the exception and reservation of the "exclusive right of fishing" in the said river, so far as such abuts upon the property conveyed, and other rights incidental to the enjoyment of the right of fishing, e.g., to cast the fishing line over the river bank and to make pools *in the "moiety of the river thereby conveyed,"* and to use boats on such moiety. It is, therefore, presumed that what the vendor has and can convey to a purchaser is a "several fishery" *in gross* only, as the usual presumption that the right of fishing in the river carries the soil appears to be expressly negatived by the above-mentioned conveyance?

A. Agreement is expressed with the conclusion that the reservation creates only a several fishery in gross.

Bastardy—Legitimation by Subsequent Marriage before Commencement of Legitimacy Act, 1926.

Q. 1386. To what time do the words "if living" in s. 1 (1) of the above Act refer? A post-Act legitimation is clear, but in a pre-Act case, supposing A, the illegitimate son of X and Y (who subsequently marry in 1860), dies in 1900, is he (A), legitimated from the commencement of the Act? The question is important if A leaves issue whose claim on an intestacy depends upon their father's legitimacy. The section says "the marriage shall . . . render that person, if living . . ." Cannot this mean "if living at the date of the marriage"?

A. The expression "if living" can, in the case of pre-Act marriages, refer only to the date of the commencement of the Act. The view suggested in the question would legitimate every bastard child born of a non-adulterous connexion at any time, back to the beginning of legal memory.

The meaning of the sub-section can be illustrated by the following examples:—

Case 1.—X and Y have a bastard child, A; X and Y have married before 1st January, 1927; A is alive on 1st January, 1927; A becomes legitimate from 1st January, 1927.

Case 2.—X and Y have a bastard child, A; X and Y marry before 1st January, 1927; A dies before 1st January, 1927, and before the marriage; A never becomes legitimate.

Case 3.—As case 2, save that A dies after the marriage; A is never legitimate.

Case 4.—X and Y have a bastard child, A; X and Y marry after 1st January, 1927—on the mth day of the nth month in the year P; A is alive on the mth of the nth in the year P; A becomes legitimate from that date.

Case 5.—X and Y have a bastard child, A; X and Y marry after 1st January, 1927, on the mth of the nth in the year P; A dies after January, 1927, but before the mth of the nth in the year P; A is never legitimate.

Case 6.—As case 5 save that A dies before the 1st January, 1927; A is never legitimate.

In general terms: In the case of pre-Act marriages A has to be alive on 1st January, 1927; in the case of post-Act marriages A has to be alive on the day of the marriage.

Vendor and Purchaser—Share of Wash-house used by Occupiers of Several Cottages—Title—Conveyance.

Q. 1387. Four cottages were acquired before 1st January, 1926, by four separate purchasers, and with each cottage one-fourth share of a wash-house, which they used in common. One cottage has now been sold. How should the one-fourth undivided share of the wash-house be conveyed? Would the words "Together with a fourth undivided share of the proceeds of sale of the said wash-house," be necessary or should the provisions of the Law of Property Act be ignored and the one-fourth share be conveyed as formerly?

A. Assuming that the conveyance to the present vendor included the legal estate in one undivided fourth of the wash-house, and not a mere easement to use it as such, the case would have fallen on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2) or 1 (4), according as the four owners of the cottages had refrained from dealing or dealt with their shares. On either alternative, the purchaser should require to be appointed a trustee of the wash-house. On the first, the vendor should retire from the trust and the others should appoint the purchaser in his stead, according to the procedure indicated in "Every-day Points in Practice," p. 50, Case 18. On the second the purchaser and others should be appointed trustees under para. 1 (4) (iii). But in any case the equitable interest should be conveyed as suggested, and notice given to the trustees.

NOTES OF CASES.

Court of Appeal.

Tilling-Stevens Motors, Limited *v.* **Kent County Council and Minister of Transport.**

Lord Hanworth, M.R., Sankey and Russell, L.JJ.

17th and 19th July.

REVENUE — LICENCE DUTY — "ELECTRICALLY-PROPELLED VEHICLE" PETROL-ELECTRIC VEHICLE - FINANCE ACT, 1926, 16 & 17 Geo. 5, c. 22, s. 13, 1st Sched., cl. 5.

Appeal from a decision of Clauson, J.

The plaintiffs were motor chassis manufacturers, and had two mechanically-driven vehicles of their own manufacture known as petrol-electric vehicles. The principle on which a petrol-electric vehicle is driven is as follows: Instead of being propelled by means of energy transmitted direct from an internal combustion engine through the gears, propeller shaft, and differential to the rear wheels as in the case of an ordinary motor car or lorry, mechanical energy is first of all generated by an internal combustion engine and is then conveyed to a dynamo where it is converted into electrical energy which is made to work an electric motor. The electric motor drives the rear wheels through a propeller shaft and differential. By the operation of cl. 5 of the 1st Sched. of the Finance Act, 1926, and s. 13 of that Act an electrically-propelled vehicle is chargeable with half of the duty it would be charged with if it were not electrically propelled. The plaintiffs claimed that their two petrol-electric vehicles were electrically-propelled, but the first defendants, the motor license authorities for the district, claimed the higher duty, and were paid it under protest. The plaintiffs issued a writ to decide the matter; the Minister of Transport being joined, as being ultimately entitled to the duty collected.

CLAUSON, J., thought that nothing was to be found in the Act which either required or entitled him to go into a consideration of what was the earliest source of energy to be found in the vehicle. The wheels went round because the electric motor with the help of the propeller shaft made them revolve. On these grounds, the plaintiffs had established that the vehicles in question were electrically propelled.

The defendants appealed.

Lord HANWORTH, M.R., and Lord Justice SANKEY gave judgments allowing the appeal.

Lord HANWORTH, M.R., said that the court must decide not upon scientific, but upon common-sense lines. It was the petrol engine which caused electricity to be stored in the accumulator, and the driver of the car must replenish, from time to time, with petrol, just as in any ordinary car. Although the vehicle in question might have electric transmission, it still remained one deriving its main source of power from a petrol engine, and so the vehicle was not in the "electrically-propelled" class.

Lord Justice RUSSELL, dissenting, said that the point at issue could be best explained in the form of question and answer. Why did the car move? . . . because the wheels rotated. Why did they rotate? . . . because the shaft did. Why did the shaft rotate? . . . because of the motor. What was the motive power emanating from the motor? . . . electricity! An electric tram would be described as "electrically propelled," yet the only difference between the vehicle under discussion and a tram was that in one case the engine generating electricity was carried on the vehicle itself; in the other it was not.

COUNSEL: *The Attorney-General* (*Sir Thomas Inskip*, K.C.) and *Stafford Crossman*, for the Minister of Transport; *K. E. Shelley*, for the Kent County Council; *Sir Arthur Colefax*, K.C., and *W. Trevor Watson*, for the respondents.

SOLICITORS: *G. B. Hemming & Son*, agents for *Bracher, Son and Miskin*, Maidstone, for Council; *Treasury Solicitor*, for the Minister of Transport; *Godden, Holme & Ward*, for the respondents.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Burnham *v.* **Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd.** Clauson, J. 5th July.

COMPANY—ACTION ON BEHALF OF DEBENTURE-HOLDERS—MONEYS STATED OWING IN BALANCE SHEETS—CLAIM FOR PRINCIPAL AND INTEREST—DEBT NOT STATUTE BARRED—CIVIL PROCEDURE ACT, 1833, 3 & 4 Will. 4, c. 42, ss. 3, 5.

This was an action by a debenture-holder, on behalf of himself and all other debenture-holders, against the defendant company, whose debentures, all of the same amount, contained covenants for payment of interest at certain intervals and for repayment of principal at a specified date. Reports containing balance sheets which expressly stated the amounts owing on these debentures were sent regularly to such debenture-holders as were shareholders and copies of the balance sheets were filed annually with the Registrar of Companies. The claim was for payment of principal and interest due on the debentures, and to the contention that the claim was statute barred by s. 3 of the Civil Procedure Act, 1833, the plaintiff replied that the said balance sheets amounted to an acknowledgment that the debt was still on foot.

CLAUSON, J., said that the Civil Procedure Act, 1833, did not require that an acknowledgment be given to all the debenture-holders. Such an acknowledgment need not amount to a promise to pay, and need not be made to the party making the claim. In all the circumstances, the issue of the balance sheets constituted a sufficient acknowledgment of the company's indebtedness under the debentures, and the claim of the debenture-holders against the company was not barred by any statute of limitations.

COUNSEL: *C. L. Fawell*, for the plaintiff; *A. P. Vanneck*, for the defendant company.

SOLICITORS: *Alfred Cox & Son.*

[Reported by K. R. A. HART, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

H—, A. *v.* **H—, G. M.**

Lord Merrivale, P. 8th and 25th June.

DIVORCE—DOMICIL—WIFE'S PETITION FOR DISSOLUTION—APPEARANCE UNDER PROTEST—WIFE'S APPEAL FROM REGISTRAR'S ORDER FOR TRIAL OF ISSUE OF DOMICIL—ESTOPPEL—DICTA OF LORD GORELL IN *Armytage* v. *Armytage*, 1898, P. 178, AND *Ogden* v. *Ogden*, 1908, P. 46, NOT APPROVED.

This summons, adjourned into court, raised important questions as to estoppel and domicil. The facts and arguments appear from the judgment.

Lord MERRIVALE, P., in the course of a considered judgment, said: The question raised is whether there is a rule of law governing the jurisdiction in divorce, whereby, as between parties originally of English domicil, a husband judicially separated from his wife and alleged to be afterwards guilty of adultery, is disentitled to allege in proceedings by the wife for dissolution of marriage that since the decree of judicial separation he has become domiciled elsewhere. The domicil of origin of the parties was English. They were married in England in 1915. In 1921 a decree of judicial separation on the ground of desertion was pronounced at the suit of the wife. She now petitions for dissolution of marriage on the ground

that the husband has, during 1927 and 1928, lived in adultery at Nice. The respondent has appeared to the petition under protest, alleging himself to be domiciled in France. At his instance an order has been made for trial of an issue to determine whether he is or is not domiciled in England. The petitioner applies to set aside the order, or, alternatively, for directions for trial of the issue by *viva voce* evidence at the hearing of the petition. For the petitioner it has been argued that a husband domiciled in England who has deserted his wife is thereupon estopped from acquiring domicil elsewhere, and that the wife so deserted is entitled to determine the forum in which proceedings as to the dissolution of marriage shall be taken. In effect, what is contended for is a condition as to domicil, stereotyped by or upon the decree of judicial separation and incapable of being altered without the consent of the wife. Admittedly there is no direct authority for this proposition.

His lordship referred to several early decisions, and to *Armytage* v. *Armytage*, 1898, P. 178, and *Ogden* v. *Ogden*, 1908, P. 46, and in commenting upon the opinion expressed by Lord Gorell in those cases, to the effect that in the case of a wife, antecedently domiciled here and deserted here by her husband, the husband could not be allowed in the wife's suit for dissolution to assert for the purposes of the suit that he had ceased to be domiciled in this country, said: The passages are *obiter*, but express the considered views of an eminent judge. They have not, however, commanded the common assent of jurists, see "Dicey on Conflict of Laws," and the Judicial Committee of the Privy Council in *The Attorney-General for Alberta* v. *Cook*, 1926, A.C. 444, laid down as axiomatic that one of the effects of marriage is to give to both spouses the domicil of the husband, and that the jurisdiction to decree dissolution is that of the country of the domicil. In the present case counsel for the petitioner agrees that he knows of no case in which effect has been given to the *dicta* of Lord Gorell. If they are of authority they define an exception to the principle of jurisdiction enunciated above and emphasised in recent judgments in the House of Lords and the Privy Council, whereby independent authority to decree divorce cannot, consistently with English law, co-exist at the same time in two sovereign states. Careful examination of these *dicta* makes it clear that they did not purport to lay down a rule of law, but rather to state the practice of this court. If there is such a rule of practice, it supposedly relates to people whose domicil of origin is English. There is no such rule in the common law or in the Matrimonial Causes statutes, and as a substantive proposition of English law the alleged rule cannot be sustained. It is suggested that the doctrine of estoppel could be called in aid to give effect to the principle contained in Lord Gorell's *dicta*. But the suggestion that, in a case like the present, the respondent should be met by an estoppel *in limine* in the matter of jurisdiction, is a proposal to resort to a legal fiction and not a plea of estoppel in the true sense. Estoppel is a rule of evidence which may have to be considered at the trial of the issue of domicil.

His lordship directed the issue to be set down for trial by *viva voce* evidence with the court. He dismissed the appeal against the registrar's order and allowed the petitioner her costs of the summons and the appeal.

COUNSEL: *Clifford Mortimer*, for the petitioner; *Beddington*, for the respondent.

SOLICITORS: *Watkins, Phipos & Brown; Mawby & Barrie.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

WOMEN AS INQUEST JURORS.

When a woman's name was called to serve on a jury at an inquest at Canterbury on Monday last the coroner (Mr. A. K. Mowll) apologised to her for being called, and added, "I do not think it at all desirable for women to serve on coroner's juries. Had I known of it in time you would not have been called."

Legal Parables.

VI.

The Option to Purchase and the Unstamped Title Deed.

A CARELESS solicitor had for a long period neglected to make the usual searches in all but very large purchases, trusting rather to the fact that in every other case it was bound to be all right.

One day it was discovered by an angry client that premises purchased by him for conversion into shops were barred therefrom by reason of a covenant (duly registered as a land charge) limiting the user to private dwelling-houses (which covenant was not disclosed by the abstract). Wherefore the angry client did sue the careless solicitor and obtain damages from him for negligence.

So the solicitor sat up and took heed unto his ways and thereafter examined each title with the utmost care and deliberation lest haply he might again be caught bending (as the saying is).

And lo! a certain client had an option to purchase a piece of land very cheaply and an opportunity awaited the client to re-sell the same at a magnificent profit. And he did bring the papers to the solicitor to prepare the usual contract for sale. And the solicitor being fearful of making any error did pursue every possible enquiry respecting the land, even to the point of perusing the title before approving the contract.

Now there had been in past ages a stamp affixed to purchase deeds—known popularly as the "P. D. stamp" but by reason of change of governments and other causes, it had been discontinued. And the deed forming the root of title, albeit that it was of that period was without such stamp. Wherefore the once careless solicitor did spend much time and correspondence in endeavouring to persuade an unwilling vendor to have such stamp impressed on the deed. And while the correspondence proceeded the option lapsed and the client saw his chance of a profit vanish into thin air. And he was very wrath and spoke to the solicitor: "What reason is there for insisting on this matter? Is not the I. V. D. dead and buried?"

But the solicitor made answer and said: "Verily, it is a matter of small account, but I acted on principle; for it is right that everything should be in perfect order."

Whereupon the client muttered strange oaths and swore that next time he would go to a less careful solicitor.

To be careless in business is dangerous, but to be over-careful is a grievous fault. "BARON."

Societies.

The Law Society.

PROVINCIAL MEETING AT EASTBOURNE.

The railway companies in Great Britain (except the Metropolitan, the Metropolitan District, and the London Electric Railway Companies) have agreed to issue tickets available from 1st to 6th October, at the ordinary single fare and one-third for the double journey, fractions of 3d. reckoned as 3d., minimum adult fare 1s., to passengers travelling to attend The Law Society's Provincial Meeting at Eastbourne on the 2nd October next.

Vouchers, duly filled in and signed by the Hon. Secretary of the Eastbourne Law Society, must be surrendered at the booking offices by the persons in whose favour the forms are issued. Such vouchers will be forwarded in due course by the Hon. Secretary of the Eastbourne Law Society for the use of those who have or who may intimate their intention of attending the meeting at Eastbourne.

A full report of the whole of the proceedings at the above meeting will appear in the Autumn Special Number of THE SOLICITORS' JOURNAL, *which will be published in the following week.*

Rules and Orders.

THE SUPREME COURT FUNDS (No. 2) PROVISIONAL RULES, 1928, DATED 31ST JULY, 1928.

I, the Right Honourable Douglas McGarel Lord Hailsham, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury, and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925,(*) and of every other power enabling me in this behalf, propose to make the following Rules :—

1. Paragraph (4) of Rule 45 of the Supreme Court Funds Rules, 1927,(†) is hereby revoked and the following paragraph shall be substituted therefor :—

"(4) In any case in which money has been lodged under the Rules of the Supreme Court (Poor Persons), 1920,(‡) directions in writing signed by the President for the time being of the Law Society or by some other person nominated for that purpose from time to time by the Law Society, and in either case counter-signed by the Secretary of the Law Society, shall be sufficient authority to the Accountant-General to deal with sums not exceeding £20 in amount."

2. These Rules may be cited as the Supreme Court Funds (No. 2) Provisional Rules, 1928, and the Supreme Court Funds Rules, 1927, as amended, shall have effect as further amended by these Rules.

And I, the said Douglas McGarel Lord Hailsham, Lord High Chancellor of Great Britain, with the same concurrence as aforesaid, hereby certify that on account of urgency these Rules should come into operation on the 1st day of August, 1928, and hereby make the said Rules to come into operation on that day as Provisional Rules.

Dated the 31st day of July, 1928.

Hailsham, C.

George Bowyer } Lords Commissioners of His
F. George Penny } Majesty's Treasury.

(*) 15–6 G. 5, c. 49. (†) S.R. & O. 1927, No. 1184. (‡) S.R. & O. 1920, No. 2325.

Legal Notes and News.

Professional Announcements.

(2s. per line.)

The firms of GRECE & PATTEN, and of BACON, PHILLIPS AND PRINGLE, of Redhill, Surrey, have been amalgamated, and the partners, G. Lewis, F. Grece, and W. R. Howe Pringle, will carry on the amalgamated practice at both addresses—136, Station Road, and Bank Chambers, Redhill.

JUDGE JEFFREYS' LODGINGS.

The picturesque half-timbered house at Dorchester used by Judge Jeffreys during the Bloody Assize, and known as "Judge Jeffreys' Lodgings," is being renovated by the owner, Sir Robert Williams. When the work is completed it will be opened as a café and antiques shop.

A TRUE BILL AGAINST THE TWO POLICE CONSTABLES.

The grand jury at the Old Bailey on Wednesday last returned a true bill in the case of John William Clayton, thirty, and Charles Victor Stevens, thirty, the police constables who were committed for trial from Clerkenwell, accused of "conspiring to prefer a false charge against Helen Adele and to pervert the course of justice."

THE AGE OF A CHAR-A-BANC DRIVER.

Mr. F. G. Lefroy, the Bournemouth coroner, held an inquest last Wednesday on Frederick Curtis, the fourteen-year-old son of a Boscombe dentist, who was killed by collision with a fourteen-seater char-a-banc when cycling round a corner at Boscombe. Mr. Lefroy said he thought the char-a-banc driver, who was nineteen years of age, was not old enough to have charge of such a vehicle.

To their verdict of accidental death the jury added the rider, "In our opinion the driver of a char-a-banc of this size or larger should have attained the age of twenty-one."

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 13th September, 1928.

	Middle Price 5th Sept.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	86⅞	4 12 0	—
Consols 2½%	56¼xd	4 9 0	—
War Loan 5% 1929-47	102⅝	4 17 0	4 17 6
War Loan 4½% 1925-45	98½	4 11 0	4 14 0
War Loan 4% (Tax free) 1929-42	101¾	3 19 0	3 19 6
Funding 4% Loan 1960-1990	90¼	4 9 0	4 11 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94	4 5 6	4 7 6
Conversion 4½% Loan 1940-44	99	4 11 0	4 13 0
Conversion 3½% Loan 1961	77½xd	4 11 0	—
Local Loans 3% Stock 1921 or after	64¾xd	4 12 6	—
Bank Stock	261	4 13 0	—
India 4½% 1950-55	94	4 16 0	4 19 6
India 3½%	71	4 19 0	—
India 3%	61xd	4 18 0	—
Sudan 4½% 1939-73	96	4 13 9	4 15 0
Sudan 4% 1974	87	4 12 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3 12 0	4 8 0
Colonial Securities.			
Canada 3% 1938	86	3 10 0	4 16 0
Cape of Good Hope 4% 1916-36	95	4 4 3	4 19 6
Cape of Good Hope 3½% 1929-49	82	4 5 6	4 18 6
Commonwealth of Australia 5% 1945-75	99½	5 1 0	5 2 0
Gold Coast 4½% 1956	95	4 14 6	4 17 6
Jamaica 4½% 1941-71	95½	4 14 6	4 17 6
Natal 4% 1937	94xd	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	99	5 1 0	5 3 0
New Zealand 4½% 1945	96	4 14 0	4 17 6
New Zealand 5% 1946	104	4 16 0	4 14 0
Queensland 5% 1940-60	98xd	5 2 0	5 0 6
South Africa 5% 1945-75	104	4 16 0	4 16 0
South Australia 5% 1945-75	98	5 2 0	5 2 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	100	5 0 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 13 0	—
Birmingham 5% 1946–56	103xd	4 17 0	4 15 0
Cardiff 5% 1945–65	102	4 18 0	4 16 6
Croydon 3% 1940–60	70xd	4 5 0	4 16 0
Hull 3½% 1925–55	77½	4 10 6	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75xd	4 13 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64½	4 13 0	—
Manchester 3% on or after 1941	64½	4 13 0	—
Metropolitan Water Board 3% 'A' 1963–2003	65xd	4 12 0	4 12 6
Metropolitan Water Board 3% 'B' 1934–2003	65½	4 11 0	4 12 6
Middlesex C. C. 3½% 1927–47	84	4 3 6	4 17 0
Newcastle 3½% Irredeemable	74	4 14 6	—
Nottingham 3% Irredeemable	64	4 13 0	—
Stockton 5% 1946–66	101	4 19 0	4 19 0
Wolverhampton 5% 1946–56	104	4 16 6	4 19 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	82	4 17 6	—
Gt. Western Rly. 5% Rent Charge	99	5 1 0	—
Gt. Western Rly. 5% Preference	93½	5 8 0	—
L. & N. E. Rly. 4% Debenture	75½	5 6 0	—
L. & N. E. Rly. 4% Guaranteed	70	5 14 0	—
L. & N. E. Rly 4% 1st Preference	60½	6 12 0	—
L. Mid. & Scot. Rly. 4% Debenture	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	77	5 4 0	—
L. Mid. & Scot. Rly. 4% Preference	69	5 16 0	—
Southern Railway 4% Debenture	80	5 0 0	—
Southern Railway 5% Guaranteed	97½	5 2 6	—
Southern Railway 5% Preference	89	5 12 0	—

PRACTICES AND PARTNERSHIPS.

FIRM of Chartered Accountants are prepared to purchase an accountancy practice, or arrange with practitioner retiring.—"W," Box 519, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR with substantial practice wishes to amalgamate with busy Solicitor or firm in the City. Reply "J.G.," Box 512, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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SOLICITOR, aged 34, admitted 1920, last two years London, following country general practice, desires partnership or succession. East Anglia preferred. —Apply "B.S." Box 311, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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CITY SOLICITOR has Furnished Office with use of telephone and staff to let. Mutual assistance. Prospect of early succession.—Write, with particulars and capital available, "H.L.," Box 90, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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LAW BOOKS.

LAW Times Reports. Vols. 59 to 75, Dec., 1888, to Aug., 1896. Law Times, Vols. 86 to 98, Dec., 1888, to April, 1895. Bound half calf. Also incomplete, unbound, Law Reports, March, 1897, to June, 1903, and Law Times, May, 1895, to April, 1903. For Sale. Offer invited.—Bramwell, 50, Lune-street, Preston.

ENCYCLOPÆDIA OF LAWS OF ENGLAND (second edition), 17 vols. (with supplements) complete. £5 5s. (London).—"X," Box 510, Solicitors' Journal, 29, Breams-buildings, E.C.4.

ENGLISH and Empire Digest for sale on easy terms; books unused; approval with pleasure. —BM/WHKN.

WANTED to purchase.—Chitty's Statutes last edition with supplements to 1926; also india paper edition of Halsbury's Laws of England. Write "D.," Box 195, Solicitors' Journal, 29, Breams-buildings, E.C.4.

LAW REPORTS.—Wanted, set of Law Reports (K.B. Ch., Div., C.A., and H. of L.) from 1900 onwards. State price and particulars to J. W. Vaughan, Solicitor, 2, Bond Place, Leeds.

WANTED, copies of "The Solicitors' Journal" of 10th and 17th October, 1925, and Index to Vol. 70.—"Conveyancer," Box 28, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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